IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.8277 OF 2006

Shri.Shaikh Allamin Rafiyoddin. ..Petitioner.
Vs.
State of Maharashtra and ors. ..Respondents.

Mr.N.V. Bandiwadekar for the petitioner.
Mr.C.R.Sonawane, AGP. for the Respondent Nos.1 to 3.

CORAM: S.B. MHASE &
R.S. MOHITE, JJ.
DATE : June 5, 2007

P.C.

1. Heard.

2. Rule. Rule returnable forthwith.

3. The petitioner is a teacher. The petitioner was earlier working with Dr.A.R. Undre English High School and Jr.College at Borli Panchtan, Taluka Shriwardhan, District Raigad. He was appointed there on 9.3.1993. He completed service for more than 8-years in the said school and thereafter resigned from that school. The petitioner came to be appointed as Asstt. Teacher on probation in Respondent No.6 School vide order dated 12.9.2001 and accordingly petitioner joined with respondent No.6 school on 13.9.2001. It is a granted school. When he joined the said school, scheme of

Shikshan Sevak was made applicable by the Govt. Under the said scheme the employee is expected to work as Shikshan Sevak for a period of three years and then he gets a regular pay scale. However, the petitioner was earlier working in non-granted school for a period of more than 8-years as stated above and therefore, while giving an approval the Education Officer specifically stated that in view of the provisions of Clause 16(2) of the Scheme of Shikshan Sevak, the said scheme is not applicable to the case of the petitioner and thus granted approval. However, it appears that, later on Audit Department has taken objection stating that the endorsement made by the Education Officer is improper and the petitioner should have been appointed as Shikshan Sevak initially for a period of three years. The Aduit department further stated that the appointment of the petitioner directly on the pay scale is not correct and directed recovery of salary. The said letter is dated 17.4.2006. In view of this letter, the petitioner has approached this court.

4. The respondents have filed reply and according to the respondents said clause 16(2) is only applicable when the person is declared "surplus" in earlier school and thereafter he is again appointed .

5. We have perused the said Scheme. Clause No.16 of

the said scheme states under what circumstances the scheme of the Shikshan Sevak is not applicable. Clause 16(2) states that in case of surplus teachers and the teachers who were permanent earlier have resigned and thereafter again have accepted new employment, the scheme will not be applicable. That means by this clause two types of teachers have been considered; One clause of scheme is that those teachers who were declared surplus and retrenched from the employment. In case of such a teacher, scheme of Shikshan Sevak is not applicable. The other clause of scheme is that the teachers who were permanent in service but they have resigned and thereafter have taken new employment are not coming under this scheme. The petitioner clearly falls in this category, namely, in the category of the teacher who was permanent in service, resigns from the said post and accepts new service. Therefore, the objection taken by the Audit Department was unjustified. On the contrary, endorsement made by the Education Officer while granting approval is just and proper. Therefore, we are inclined to allow this petition.

6. The order dated 17.4.2006 passed by the Respondent No.4 is hereby quashed and set aside. Consequently, the order passed by the Management dated 11.10.2006 is also quashed and set aside. Rule is made absolute in the above terms. In the facts and circumstances of this

case there will be no order as to costs.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**